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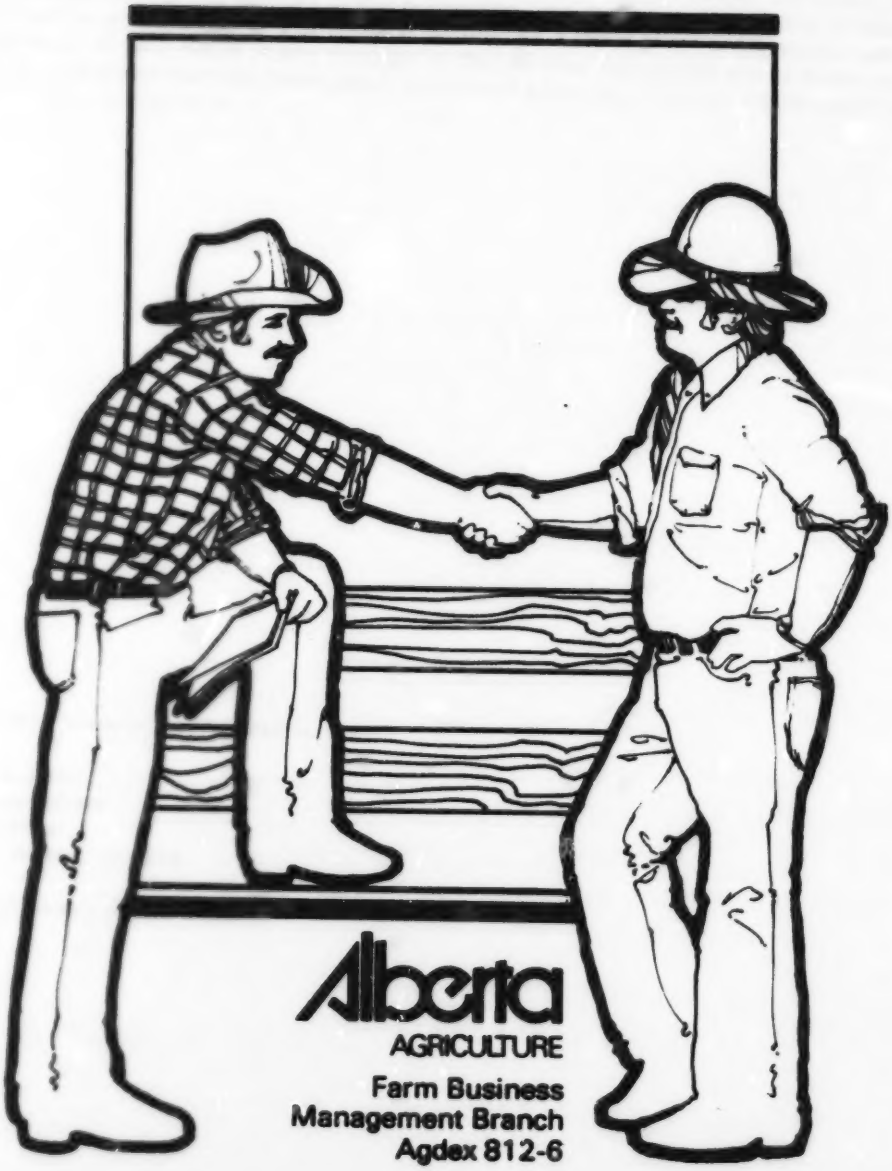
JOINT VENTURES



Alberta
AGRICULTURE

Farm Business
Management Branch
Agdex 812-6

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This publication contains a discussion of the characteristics, establishment and dissolution of a joint venture. However, the purpose of this publication is to provide information to enable discussion of alternatives with your lawyer and accountant. It is not intended that you rely upon the material for any other purpose. While every effort has been made to ensure that the information in the publication is correct at the time of its publication, neither the Crown, its agents or employees, nor the authors of this publication, assume any responsibility or liability whatsoever for any financial loss or damage suffered as a result of the publication or use of these materials or as a result of any changes in the law after the publication of these materials. It is recommended that the professional services of a lawyer or accountant be sought in dealing with specific problems.

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7000 - 113 Street
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OR
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Joint Ventures

prepared by

Merle Good, Farm Management Economist,
Financial Management Section

With sample agreement clauses
prepared by
Tom Jones, C.A., L.L.B., Tax Lawyer,
Cook, Snowdon and Laird, Calgary

Alberta
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Management Report

PREFACE

The establishment and successful operation of a business arrangement between two or more persons demands a crystal clear understanding of the purpose, intent and ramifications of their joint undertaking. In today's complex business world, the formation of a business arrangement for a singular purpose, may without careful scrutiny by professional counsel, contravene certain rules and regulations.

In agriculture, the historical crop-share or cash rental agreements between a landowner and tenant provide a perfect example of where the initial intent has been met. But after analyzing the impact of certain income taxation rules, many landowners are finding themselves classified by Revenue Canada as passive landlords and are thereby ineligible for various elections under the Income Tax Act, such as the farm property rollover provision.

This publication has therefore been prepared to offer a viable alternative to these historical lease agreements. When studying this alternative, do not strictly focus on its potential of maintaining or establishing an active farming status for its participants, rather consider the financial security, operational stability, asset ownership, other estate and income tax implications, as well as the costs and ease of settling upon dissolving the business arrangement.

This publication was prepared by Merle Good, Farm Management Economist, under the direction of Harry Warne, P. Ag., Supervisor, Financial Management Section, Farm Business Management Branch.

We gratefully acknowledge the contribution of Tom James, C.A. LL.B. Tax Lawyer with Cook, Snowdon & Laird of Calgary, for his valuable and competent assistance in reviewing the manuscript for accuracy and completeness and for developing the sample agreement clauses contained in the publication.

J. Wilson Loree, P. Ag., Head
Farm Business Management Branch
Olds, Alberta

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INTRODUCTION

There are obvious advantages in carrying on a joint venture — whether a business venture or any other kind — as a joint undertaking by two or more persons rather than by one person. Working together, members of a group may pool their knowledge, wisdom, physical and financial resources. There are also obvious disadvantages; disagreements may lead to stalemates regarding business decisions; dissolution of the venture may trigger an unforeseen tax liability; dishonesty of one member may lead to heavy losses suffered by other members. None of these problems exist where a man acts solely on his own behalf. Generally, the advantages of group activity outweigh the disadvantages, at least in the minds of those who contemplate a business venture. It is therefore paramount that investigation of taxation benefits, estate planning features, and the potential for expansion offered by a proposed business arrangement are considered after the evaluation of the respective parties' personal relationship.

Regretfully, people often think they are in agreement when in actuality they are not. The purpose of a business arrangement is to achieve goals and objectives that are mutually advantageous to both parties, and unless "a meeting of the minds" has occurred in a **formalized** manner, there may be no workable agreement at all. To facilitate "a meeting of the minds", the publication attempts to raise the concerns, problems, and possible solutions to individuals considering carrying on a joint venture.

WHAT IS A JOINT VENTURE?

The primary purpose of this manual is to outline characteristics of the joint venture as a structure for carrying out farming activities with other parties. A joint venture can be defined as a business arrangement where two or more parties maintain joint control over a specific business undertaking and contribute resources towards its accomplishment. The life of the joint venture is limited to the length of time it takes to complete the undertaking, which, depending on the circumstances, may be of a short or long term duration.

The relationship between the parties to the joint venture will be governed by an agreement which should clearly establish joint control by all of the participants.

Decisions in all areas essential to the accomplishment of a joint venture should require the consent of all parties so that no one party is in a position to control the operation.

DISTINGUISHING A JOINT VENTURE FROM A PARTNERSHIP

A joint venture is in many ways like a partnership, however, there are certain very important differences. The significant differences between the two structures could be generalized as follows:

Debt Liability

A party to a joint venture would appear not to be liable for the obligations of the other participants. Thus, where a party has a 50 per cent interest in a joint venture, his liability would be limited to 50 per cent of all debts incurred by the joint venture in the absence of personal guarantees or other agreement. A partner in a partnership would be liable, along with all other partners, for the total debt of the partnership. This increased level of liability is termed "joint and several" liability. Where debt liability is a major consideration in the joint venture, then we suggest you convey this concern to your lawyer before finalizing your agreement.

Ability to be Bound by Other Parties

In a joint venture, one party cannot be bound by the actions of another party without his prior consent. In a partnership, generally each partner has the ability to bind all of the remaining partners without their prior consent.

Individual Ownership of Property

In a joint venture, capital property such as land, buildings and machinery, will be owned by the parties individually and perhaps jointly. Each party is able to retain individual title to his/her property and can deal with his/her particular interest separately in the absence of any special provisions within the agreement.

If the property is farmland, the party will not have to give up title to the land but will remain liable for all related taxes on the farmland subject once again to any agreement concerning such expenses with the other joint venture participants.

If the property is depreciable, consisting of assets such as farm machinery, the party will be able to claim the full amount of any capital cost allowance which might be available in a given year personally, as opposed to having it allocated between the various joint venture participants.

In a partnership, any available capital cost allowance (CCA) on depreciable assets is taken at the partnership level and each partner is merely allocated his proportionate share of the profit of the partnership which would include the deduction of capital cost allowance.

If assets are to be included in a partnership, they will become the property of the partnership entity and the individual will no longer retain title to the property. Such a transfer may be achieved on a tax free basis, however it requires the filing of special elections under the **Income Tax Act**.

Sharing of Profits

In a joint venture agreement, the parties will share in the gross returns and will deduct other related expenses such as CCA, interest on debt, taxes, on an individual basis.

In a partnership the parties would share in the net profits of the business, with all expenses deducted at the partnership level and none at the individual level.

Registration

A partnership should be formally registered in accordance with the **Partnership Act**, c.P-2, R.S.A. 1980, as amended. This is not required in a joint venture arrangement.

FACTORS TO CONSIDER IN A JOINT VENTURE

Income Tax Consequences

The main income tax advantages to carrying out a farming operation under a joint venture, as opposed to a partnership or through a corporation are as follows:

1. There is no need to transfer any property to the joint venture which otherwise amounts to a disposition of the property and results in the filing of income tax elections or the payment of additional income tax.

2. The cumbersome provisions of the sections of the **Income Tax Act** dealing with partnership or with corporations can be avoided, especially in the formation and dissolution in both these types of arrangements.

3. Each party is considered to have received his share of the farm's gross sales and related expenses on the same basis as if the farming activities were being carried out individually. This allows the claiming of any capital cost allowance (depreciation) on depreciable assets and the use of the livestock inventory provision (LIP) at the individual level.

4. A taxpayer (including a corporation) may well be considered to be carrying on the active business of farming which allows him to take advantage of the rollover provisions of the **Income Tax Act** and thus pass property (shares) down to children on a tax free basis. This cannot be done if the taxpayer is merely renting property to parties outside of his immediate family (such as a brother, nephew or neighbor) either on a cash or crop share basis.

In situations involving a corporation, the leasing of land even to a family member contravenes the rollover rules and results in a taxable transfer when shares are passed down to the next generation.

To be actively engaged in a farming business, the taxpayer must "have a reasonable expectation for profit, incur managerial responsibility, and be at risk" the criteria for determining any business. It is for these reasons, that a custom farm contract, where the taxpayer hires another party to do specific tasks, enables the taxpayer to meet the business activity test and fall under the rollover provision.

To achieve the same results in joint venture arrangements, it is imperative that the agreement defines the specific purpose or business for which the joint venture is being created, the initial contribution of capital, managerial responsibilities, and the distribution of income generated from the joint venture.

The importance of establishing a true business activity and not relying on a crop-share arrangement for a rollover, is best illustrated in a recent income tax case.

"The deceased taxpayer, who had inherited farmland, arranged with Mr. H. that he farm the land and the deceased continue to receive one-third of the crop. The Minister assessed the taxpayer for a capital gain from the deemed disposition of the farm property. On the estate's appeal, the Tax Review Board found that the relationship between the deceased and Mr. H. was not a partnership or JOINT VENTURE whereby the deceased shared profits or losses, and that Mr. H. conducted the farming operation on his own. Therefore, the farm was not subject to the relevant rollover provision and the estate's appeal was dismissed on this point".*

To further clarify Revenue Canada's position, I wrote a letter asking for their interpretation of the validity of a joint venture for the purposes of establishing and maintaining each participant's eligibility for the farm property rollover provision. Here is an excerpt from this letter:

Question

It is apparent that the alternative of establishing a joint venture between a farmer and his partner, company, or neighbor, could be extremely attractive. Each party would contribute the use of their assets, labor and management to the business venture. In return, each party would get a proportionate share of the profits or (losses) and not face the problems of joint liability inherent in partnerships. This type of joint venture arrangement would in the view of many, place both parties in an "active farming" position, as each party would be a risk-taker and have managerial input into the operation.

We would like you to address these concerns and outline Revenue Canada's position on such joint venture operations.

Answer

"As you are aware, it is very difficult to draw a line between a partnership and a joint venture. It is not only the terms and provisions of the documents executed between the parties that determine the true nature of their relationship, but their conduct and actions as well. Such conduct and actions can only be determined after the fact. It is, therefore, impossible to give firm guidelines as to what terms or provisions the Department might accept in a joint venture agreement (or indeed for a partnership agreement)."

"Whether the arrangement is a joint venture or partnership, the taxpayer must be actively engaged in farming as a matter of fact in order for the rollover provision to apply, the Department should not accept a document that purports to impute active farming to an individual whose operation is that of an investor, lesser or inactive partner in a partnership. The determination must be made on the basis of substance, rather than the form of the agreement."

It soon becomes apparent that the task of creating a document that outlines managerial responsibility, financial risk and profit sharing will not meet the objective of having each participant "actively engaged" in the business of farming.

In other words, each participant must be able to prove his/her participation in managerial decisions and financial responsibility. The task of "how to" establish and follow the terms of a properly structured agreement will be discussed throughout the remainder of the publication.

It is this concern of maintaining an active farming status in the eyes of Revenue Canada that has sparked a growing interest in a joint venture agreement.

* Lobsinger Estate 82 DTC 1810

Asset Ownership

One of the advantages, individual asset ownership, may in fact be a disadvantage in certain situations. In a father – son arrangement there may be no participation by the son in growth of initial assets and no freeze effect on existing assets.

Under an estate freeze, father retains title and control of the property but transfers all or some of the future growth value to the next generation. This type of estate planning technique is very common in farm corporations. (See *Farm Business Incorporation* Agdex 817-4)

Asset transfer can still occur under a joint venture arrangement but only through a sale and gift between parent and child. This results in not only asset ownership but also control being transferred to the next generation in the absence of other agreement or conditions.

Control and Operation

Since a joint venture is only an operating vehicle and owns no assets, it is definitely more flexible than a partnership. This fact however, also leads to a very complex area concerning proper operating procedures.

A common mistake in father-son arrangements is to withdraw funds from the joint venture to purchase new assets. Dad trades in his old disc and the difference is paid from the joint venture account. Who owns the new disc, dad, son or the joint venture?

The proper procedure to follow is for the father to withdraw sufficient funds from the joint venture and incur a loan to personally purchase the new disc. If the son wishes to purchase an interest in the asset, a similar withdrawal, borrowing of funds, and personal investment should be completed and documented.

The two parties now own a percentage or an undivided interest in the asset purchased which they contribute the use of to the joint venture. **Remember,** assets are to remain the property of the individuals and not property of the joint venture, otherwise we may be creating a partnership.

The following is a diagram showing the operating mechanism and important considerations when forming and operating a joint venture arrangement.

JOINT VENTURES

JOINT VENTURE

- OWNS NO ASSETS
- OPERATING VEHICLE
- GROSS PROFIT ALLOCATED TO PARTIES

PARTY A

- OWNS ASSETS
- CLAIMS CCA & LIP
- RESPONSIBLE FOR ASSET PURCHASES

PARTY B

- SAME AS A
- ALSO RESPONSIBLE FOR DEBT PAYMENTS & LAND TAXES

- IMPORTANT CONSIDERATIONS

1. DEFINE AGREEMENT & ACTIVITY OF PARTIES
2. DECIDE ON INCOME SPLITTING ARRANGEMENT
3. DECLARE ELIMINATION OF JOINT & SEVERAL LIABILITY
4. ESTABLISH PERMIT BOOK
5. OUTLINE ANY BUY-SELL AGREEMENTS

STRUCTURE OF A JOINT VENTURE

The structure of a joint venture arrangement as outlined earlier is quite basic. The parties involved contribute the use of their individually or jointly owned assets, labor and management in return for a percentage of the gross returns. Acquisition of assets, debt payment, taxes, the claiming of capital cost allowance and the application of various tax strategies are then applied against the individual's share of income from the joint venture. In order to properly understand what your particular arrangement entails, and what a joint venture will and will not accomplish, each party must ask himself "what about.... ?" questions.

To provide some general guidance in this area, the following questions will attempt to make clear the structure and operation of a joint venture arrangement.

1. Under a joint venture how do we handle inventory?
2. Who controls and holds the Canadian Wheat Board permit book?
3. What procedures should we follow in closing out the fiscal year?
4. How do we set up the income sharing and management responsibilities?
5. How do we file an income tax return?
6. What happens upon dissolution of the agreement?

Inventory Control

The problem of inventory control stems from the inability of identifying these assets (grain, livestock, supplies) and from the concept of contributing only the use of and not ownership of assets to a joint venture. It is extremely difficult to reclaim one party's contribution of grain, especially after it has been fed to a pen of cattle!

One solution to this type of problem is to value the inventory contributed, such as grain, and convert this value to a loan. (See article 5.5 of Sample Agreement). These loans (with or without interest) would be repaid by the joint venture to the contributor as soon as funds became available in excess of funds required to operate the business. Another problem in inventory control arises when one party contributes inventory items that are farming inputs. Examples could include seed, chemicals, fertilizer, etc. In these circumstances, convert the cash value of such inputs to a loan and handle in the same manner as inventory contributions (see article 5.5).

If livestock is involved and the contributor wishes to retain the right of ownership a tag and branding system could be implemented. Upon dissolving the joint venture, each party would receive his original cattle plus progeny equal to the original numbers contributed. The remaining herd would constitute inventory and either be divided according to their income sharing ratio or sold with the cash similarly divided.

Production vs Profit Splits

In certain situations the parties involved may wish to receive actual produce rather than a share of the income. This is best illustrated by a farmer with grain land (Party A) and a registered seed grower (Party B), deciding to operate under a joint venture. Party B desires to receive his share of the crop for seed distribution.

***REMEMBER**: The receipt of grain under a crop-share lease simply constitutes passive rental income, and therefore, places the landlord into a position of being ineligible for the rollover provisions.*

Under a properly structured joint venture, where both parties are involved in making the managerial decisions and are responsible for a percentage of the operating expenses, a distribution of produce "in specie" (i.e. bushels of grain) rather than a cash distribution should not categorize the arrangement as a simple crop-share lease with Party A being classified as a passive landlord.

Since a crop-share lease and a joint venture with a crop sharing arrangement are very similar in their approach, extreme care should be taken to structure a proper financial and working relationship between all parties involved.

Many tax specialists advise that a written memorandum of business decisions and activities be maintained. This document would substantiate each party's claim to active participation in the decision making process and outline any changes in the financial structure of their agreement. For example, each spring a meeting to determine which crops to plant, the fertilizer and chemicals required, etc. should be held and recorded.

Partial Production and Income Splits

In situations where only a portion of the inventory produced is required for personal use, a debt obligation, equal in value to the produce used, should be established.

To help explain this procedure, assume the following:

Party A and Party B enter into a joint venture to farm one section of grain land. The grain acreage consists of 600 acres with an operating input cost of $40 acre (excluding taxes, fuel and repairs). The land yields 60 bu of barley at a value of $2.25/bushel. The income and cost sharing ratio is 50 per cent:50 per cent.

Party B determines that he will need approximately 5,000 bushels of grain for his own use.

To equalize their positions to the agreed 50:50%, Party B should reimburse the joint venture account for tne cost value of grain used. Since Party B will receive one-half of this sum back (according to their income splitting ratio), both parties will in effect receive the agreed one-half of the net income produced.

The following example will help illustrate this concept:

Gross Income	
Sale of Grain 31,000 bu @ $ 2.25	69,750
Add: Personal Use 5,000 bu @ $2.25 by Party B	11,250
Operating Expenses:	
Cash costs acre 600 acres @ $40.00	24,000
Net Cash value	57,000
Party (A) 50%	28,500
Party (B) 50%	28,500

If repayment was not triggered upon each withdrawal by Party B, an agreement stipulating that the indebtedness would be due and payable on the first proceeds received from sale of joint venture product should be established. In other words, any funds received by Party B would be automatically allocated to the joint venture until the indebtedness was retired.

Before entering into a joint venture, prepare a question sheet and make sure your accountant and lawyer have answered these questions and your concerns satisfactorily. The old adage, that an ounce of prevention is worth a pound of cure, is truer nowhere than in the day-to-day operating structure of a business arrangement.

The Canadian Wheat Board Permit Book

"Pursuant to the regulations, a producer's certificate shall be issued to producers only." Producer means the actual producer, landlord or a mortgagee entitled to share in crops grown on land entered in the permit book.

Under a joint venture, each party is actively engaged in the production of the crop and therefore, is a producer and has a right to ship under the Canadian Wheat Board system.

Each party should apply as a joint producer under Suffix A, as this gives each party the right to his/her own shipping plate and eligibility for cash advances. With joint ventures operated on a cash basis (i.e. all crops grown are sold through the joint venture), then only one shipping plate is required. All parties involved in these types of arrangement should sign the application form to validate their activity in the business.

Joint Producers

The following is a direct quote from the application form regarding Joint Actual Producers.

"The phrase 'actual producer' also covers persons combined as an entity in the production of grain, e.g. husbands and wives, fathers and sons, partnerships, etc. Such joint entities should appear under Suffix A as the "actual producer". Joint actual producers are parties who cultivate, seed and harvest the crop or who direct and are responsible for these operations on a share basis on the land described on the permit application."

As well as issuing a joint identification plate in the name of the "joint actual producers", the country services division will issue an identification plate to each individual producer on request so that deliveries can be made in their separate names.

It is of the utmost importance that joint actual producers identify themselves as such when they fill out their application. If a delivery permit has been issued to an individual producer which should have been issued on a joint basis, the original permit book with all plastic I.D. plates will have to be returned to the board together with a new permit application completed in the names of the joint producers.

Fiscal Year End Changes

When a taxpayer establishes a business or creates a partnership or corporation, Revenue Canada allows the taxpayers to set the first fiscal year end. It can be set for any date within 12 months of commencing the new business. However, a taxpayer in business may not make a change in the fiscal period without a sound business reason and the approval of the department. The question arises: by forming a joint venture can the parties elect to automatically change their individual fiscal year-ends? The answer depends on whether the individuals were engaged in a farming business prior to the formation of the joint venture.

If both parties were farming, then it appears that a submitted request for approval is required. The formation of a joint venture is simply an operating vehicle with no change of asset ownership and as such, neither party has changed his/her status of being classified as sole proprietor. If either party was not actually farming before the joint venture was established, that individual could choose a fiscal year end independent of the other. However, unless both parties have the same year-end, the accounting problem of matching income and expenses to each party's fiscal year could be horrendous. The disadvantage of such a situation could far outweigh any advantages.

For farmers wishing to establish a new fiscal year end, the Department of Revenue considers that a business changing its fiscal period to end when its inventory is at its seasonally low level or within a seasonally slack period to be a sound reason. To determine if a fiscal year end change would be of benefit either on a tax deferred basis or for financial analysis purposes, consult your accountant.

Income Sharing & Managerial Control

In any business arrangement one of the first steps is to determine the capital contributions of each party, the expected labor and managerial commitments expected from each, and finally their expectation of a profit return.

To protect the parties and their business, every joint venture should have a written agreement signed, with income, salary and managerial control divided in a manner suitable to the situation.

In considering how income will be shared, the following are important aspects:

- The contribution of capital for use by the joint venture. This includes the land, buildings, equipment.
- The contributions of cash, (or loans) and inventory to the joint venture.
- The contributions of labor and management to the joint venture.

Obviously, the emphasis on each consideration varies from one joint venture to the other. To arrive at the actual profit split, the parties will have to decide what the return to capital investment and labor will be. For example, consider the following income (loss) share in a father/son joint venture arrangement.

The parties have agreed to a 3 per cent return on investment and a $6.00/hour value for labor and management. Their estimated amounts for labor and management are father $8,000 and son $15,000.

	Capital Invested	Return to Capital	Labor & Mgt.Return	Total Value of contrib.	Profit Share	
Father	600,000	600,000 x 3%			26,000x100	= 60%
		= 18,000	8,000	26,000	42,500	
Son	50,000	50,000 x 3%			16,500x100	= 40%
		= 1,500	15,000	16,500	42,500	

The income share is father 60%:son 40%

This income sharing ratio DOES NOT MEAN that each party is entitled to $26,000 and $16,500 respectively. It is only a basis to determine what the sharing ratio should be. The most important point of any business arrangement, which is often overlooked, is a need for sufficient earnings to meet the requirements of each of the participants. Between family members for example, the need of a son for an adequate income to perhaps service debt or acquire capital purchases may be a factor in the income sharing ratio.

Once established, the income splitting ratio need NOT BE STATIC. Remember flexibility is the key, as the ratio should be recalculated whenever necessary, that is whenever there is a major:

- Change in the capital contributed by either party
- Change in the value of labor and management
- When allocating income to the parties regardless of whether it is called a "salary" or "return on investment", the amounts are merely an allocation of profit.

Parties of a joint venture are considered to be self-employed, not employees of the joint venture, and as such, drawings from the joint venture are not expenses of the business and may not be treated as deductible expenses for income tax purposes.

Accounting and Fiscal Year End Management

Once a sharing ratio is established, the complexity of a proper accounting procedure becomes paramount. Clarification as to what constitutes joint venture income and expenses needs to be defined and stated in the agreement. (See Article 5-1). The importance of this step is critical as various costs are borne by the individuals not the joint venture. These costs would include land taxes, capital purchases and payments on loans for capital purchases. To properly handle the income flow, a separate bank account should be maintained.

All operating income and expenses of the joint venture should be handled through this account as well as any contributions from or distributions to the individual parties. (See article I.I.5) Each party should therefore, have his/her own individual bank account for personal living and expenses not associated with the joint venture.

To assist in handling the money flow, each party should have a capital account to which his share of the income or loss of the joint venture should be credited or charged. Consider, for example, the following accounts of a joint venture.

Mr. Nielsen and Mr. McGrath have agreed to a 60:40 per cent split of net cash earnings.

To establish the joint venture, an initial cash contribution of $6,000 and $4,000 respectively was agreed upon. At the end of the fiscal year they both agreed to contribute the same cash requirements for next year's activities. An analysis of last year's business activities is illustrated below in four steps:

YEAR END SETTLEMENT

JOINT VENTURE		Mr. Nielsen	Mr. McGrath
1. **Allocate Profits**		60%	40%
Gross Sales	100,000		
Less: Operating Expenses	(50,000)		
Net Cash Earnings	50,000	30,000	20,000
Initial Cash Contribution	10,000	6,000	4,000
Amount Owing to Parties	60,000	→ 36,000	24,000
2. **Funds Disbursed to Date**			
Net Cash Earnings	50,000		
Add: Initial Cash Position	10,000		
less: Cash withdrawals to date	40,000	24,000	16,000
Cash Balance	20,000	24,000	16,000
3. **Close the Accounts**			
a) Reimburse Initial contrib.	10,000	→ 6,000	4,000
b) Allocate Remaining Funds	10,000	→ 6,000	4,000
Ending Cash Balance	0	36,000	24,000
4. **Account Balance Check**			
Amount Owing		36,000	24,000
Total Disbursements		36,000	24,000
Balance Outstanding		0	0

In the above example, the business generated $50,000 in net cash earnings with distributions up to year end totalling $40,000. With an opening cash balance of $10,000 this left $20,000 in the joint venture bank account, prior to any clearing entries.

To clear the account, cheques were issued to each party for their original contributions ($10,000) and their share of undistributed earnings ($10,000) (Step 3) For next year's activities, working capital should again be re-lent to the joint venture according to the agreement. Real life, however, does not follow a textbook example. The following questions and answers will explain the various problems that arise in settling the year-end.

1. What happens if Mr. McGrath withdraws $20,000 instead of $16,000? This drawing would constitute 45% of earnings instead of the agreed upon 40%.

In this instance, when the accounts are to be cleared we look up the amounts owing to each party, which in Mr. McGrath's case is $24,000. We then subtract cash distributed to date and forward the remaining balance. The end result would have Mr. Nielsen receiving the entire 10,000 of undistributed earnings to compensate for Mr. McGrath's overwithdrawal.

	Joint Venture	Mr. Nielsen	Mr. McGrath
Distribution of Profit	50,000	30,000	20,000
Initial Cash Contrib.	10,000	6,000	4,000
Total Amount Owing	60,000 →	36,000	24,000
Cash Withdrawals	44,000	24,000	20,000
Reimburse Capital	10,000 →	6,000	4,000
Funds Distributed	54,000	(30,000)	(24,000)
Balance Owing	6,000 →	6,000	NIL
Account Balance Check Amount Owing	60,000	36,000	24,000
Total Disbursements	60,000	36,000	24,000
Balance Outstanding:	NIL	NIL	NIL

2. At year end Mr. McGrath had overdrawn on the joint venture account by not only $4,000 but rather $10,000. How do we handle this?

Using the same format as in A above, we find that Mr. McGrath will personally owe Mr. Nielsen $6,000.

	Joint Venture	Mr. Nielsen	Mr. McGrath
Distribution of Profit	50,000	30,000	20,000
Initial Cash Contrib.	10,000	6,000	4,000
Total Amount Owing	60,000 →	36,000	24,000
Cash Withdrawals	50,000	24,000	26,000
Reimburse Capital	10,000 →	6,000	4,000
Funds Distributed	60,000	30,000	30,000
Balance Owing	NIL	6,000	(6,000)
Account Balance Check Amount Owing	60,000	36,000	24,000
Total Disbursements	60,000	(30,000)	(30,000)
Balance Outstanding:	60,000	6,000 ←	(6,000)

3. Mr. McGrath paid Mr. Nielsen $4,000 of the $6,000 he owed, but to make matters worse, Mr. McGrath cannot afford to reinvest $4,000 for next year's contribution. What do we do?

If one party cannot meet his/her financial commitments there are three avenues of action:

a) Mr. Nielsen could personally lend Mr. McGrath sufficient cash on a personal demand note.

b) Mr. McGrath could apply for a personal loan from his financial institution.

c) Both parties agree that during next year's operation the first $6,000 of net cash earnings generated will go to Mr. Nielsen before the agreed 60% – 40% split will apply to the remaining net cash earnings. The $6,000 figure represents the $2,000 Mr. McGrath still owes Mr. Nielsen plus the $4,000 he cannot afford to reinvest in next year's operation.

4. Mr. Nielsen and Mr. McGrath have agreed to a monthly living allowance of $1,000. At the end of November, they realize that the joint venture will not be in a position to meet its financial requirements. What can they do?

Because of various conditions such as weather, quotas, and delayed marketing, farmers are often faced with unsold inventory and a resulting tight cash flow. An **operating loan** taken in the name of the joint venture should suffice in bridging the gap. In Mr. Nielsen's and Mr. McGrath's situation the original cash contribution of $10,000 will probably be re-lent to the joint venture for next year's operations without being distributed to the parties personally. In other words, it is not necessary for the joint venture to borrow $10,000 to repay each party's original capital and then have each party personally re-lend these funds back to the joint venture for next year's operation.

TAXATION OF JOINT VENTURE INCOME

Once the net income of the joint venture is determined, it is allocated to each member on the basis of his/her income sharing ratio. Each member must then include his share of joint venture income or (loss) on his own income tax return, and as such the joint venture does not file an income tax return.

To arrive at taxable income, the individuals may use all the income tax strategies available to sole proprietors. A list of the most common deductions used include:

- farming costs incurred individually, such as interest on term debts and land taxes.
- claiming of capital cost allowance (CCA)
- the use of the livestock inventory provision (LIP)
- application of the business investment tax credits
- the use of a five year block average
- the new forward averaging provision (Introduced Nov. 12/82).

Unlike a partnership, in a joint venture capital cost allowance is deducted at the individual level for all depreciable property whether owned jointly or individually, and not at the joint venture level.

The important point to remember is: any earnings not allocated directly to each individual and remaining in the joint venture account are deemed for tax purposes to have been received by the individuals. This is the same concept that applies to every unincorporated business. As a sole proprietor, funds that remain in the farm account still attract a tax liability.

To illustrate this procedure we will expand the previous example of Mr. Nielsen and Mr. McGrath's joint venture.

Joint Venture		Mr. Nielsen	Mr. McGrath
Gross Sales	100,000		
Less Operating Expenses	50,000		
Net Cash Earnings	50,000		
Add:Initial Cash contrib.	10,000		
Cash Balance	60,000		
Disbursement	40,000	24,000	16,000
Ending Cash Balance	20,000	24,000	16,000
Available CCA		10,000	5,000
Income Distributed	40,000	24,000	16,000
Undistr. Earned Income	10,000	6,000	4,000
Less:Capital Cost Allow.		10,000	5,000
* Taxable Income		20,000	15,000

Excluding Personal Exemptions, etc.

The net cash earnings of $50,000 are taxable regardless of whether the entire sum was distributed to the individuals by the fiscal year end. The net cash contribution of $10,000 is not taxable, as these funds were previously taxed dollars and represent a personal loan to the joint venture.

In summary, Mr. Nielsen and Mr. McGrath are personally liable for the tax payable on earned income within the joint venture (i.e. $50,000). This figure is reduced when they apply further tax deductible items such as the capital cost allowance (CCA) and other farm expenses incurred personally, including interest payments and land taxes.

DISSOLUTION OF A JOINT VENTURE AGREEMENT

The joint venture can come to an end with either party incurring absolutely no income tax effect other than to recognize the income which has been earned within the joint venture itself. Reference is made to Article 9 of the sample joint venture agreement which points out that a joint venture by definition has a predetermined ending point.

If the parties wish to enter into another joint venture to carry out further goals, a new joint venture agreement would be required. Perhaps it is this ease of dissolution of a joint venture which adds to the attractiveness when compared to a partnership or a corporation.

In certain circumstances the parties will agree that the owner will not sell or otherwise dispose of or assign the land used in the joint venture during the term of this agreement. In addition, should the owner die during the term of the agreement, and thereby be unable to contribute to the operation, the remaining operators at their option shall be able to terminate the agreement or continue it for the balance of the term. This type of dissolution clause must be carefully analyzed and understood. It protects the rights of the remaining operators to farm said lands for the agreed upon term, however, the recipients of the property are bound to that original agreement.

CASE STUDY

B & C Farms

This example is intended to provide the reader with an overview of the considerations and procedures involved in establishing a joint venture. It is hoped that the situation is typical although other situations will arise which require special solutions.

One such consideration in any business arrangement is a need for sufficient earnings to meet the requirements of each of the participants. As this varies considerably in each situation, this problem is not addressed in the following example.

Situation: — Paul Baker, age 65, had decided to sell his livestock and machinery in order to retire from doing the actual farm labor. His son George, age 25, is employed as a landman with an oil company and is not presently interested in operating the family farm. Mr. Baker decided not to sell his land but is considering leasing the property on a crop-share basis. The farm was mixed grain livestock operation on a section of land. Cultivated acreage consists of 640 acres; 350 crop, 100 hay, 100 tame pasture, and the balance consisting of native grass and the farmsite.

Bill Thompson, a neighbor, has shown interest in acquiring Mr. Baker's land as he is presently expanding his cow/calf operation to 80 females.

Objectives of Parties:

Mr. & Mrs. Baker wish to:

- provide for their retirement
- retain ownership of the land and be able to transfer said property to their son George on a tax-deferred basis.
- establish a business arrangement that allows Mr. Baker to exercise some managerial control and input into any subsequent farming arrangement.

Mr. Thompson wants to:

- farm Mr. Baker's land for a minimum period of at least three years and have Mr. Baker responsible for a percentage of the crop and forage input costs.
- rely somewhat on Mr. Baker's experience, especially in the area of livestock production.
- be protected from any legal or tax implications that may arise in their subsequent agreement.

Having discussed the above with their regional farm economist (RFE), the parties have decided to operate their farm business as a joint venture operation. The RFE assured them that such an arrangement could meet their objectives and also allow them to maintain eligibility for various income tax deferrals. As the documentation and legal requirements in establishing such an arrangement are very important, the RFE recommended they consult with both their accountant and lawyer.

Establishing the Joint Venture: Their lawyer had advised the parties that care must be taken in the drafting of such an agreement. A list of matters to be dealt with in the joint venture agreement include:

1. Identify the parties.
2. State the specific purpose or business for which the joint venture is being created.
3. Clearly define initial contributions of money, property, effort or other assets by each of the parties to the common undertaking and the allocation of profits and losses among the parties.
4. Clearly define the allocation procedure to be followed and the rights and responsibilities of each party under the agreement.
5. Because the joint venture is one of limited duration, the time at which or conditions upon which the joint venture will come to an end must be established.
6. The distribution formula upon dissolution of the agreement for any jointly owned assets must be clearly defined and understood.
7. Establish sharing of management.
8. A provision to negate all implications of a partnership relationship including a provision that the joint ventures will not be liable for debts and obligations of the other without written consent.
9. Outline any buy/sell agreements, or conditions upon which such agreements will be triggered, for any jointly owned assets.
10. Establish the shipping rights under the Canadian Wheat Board permit book system.

After discussion with their lawyer, both parties agreed that a joint venture was indeed the type of business organization most suitable for their particular situation.

Division of Net Cash Income, Labor & Management: After reviewing their contributions on capital, labor and management, Mr. Baker and Mr. Thompson felt that each party should be responsible for 50 per cent of the input costs (excluding fuel and repairs) and receive 50 per cent of the crop. They based their decision upon the "contribution approach".

Expenses	Contributions Per Cult. Acre by	
Variable Cash Expenses	**Mr. Baker**	**Mr. Thompson**
Seed	5	5
Fertilizer and Chemicals	16	16
Fuel and Lubricants	—	8
Repairs		4
Crop Insurance	2	2
Fixed Non-Cash Expenses		
Land Investment $ 1,000 ac @ 5%	50	—
Equipment Investment $180 ac @ 12%	—	21
Equipment Depreciation $180 ac @ 10%	—	18
Operator Labor and Management	5	12
TOTAL:	78	86

Calculations:

Mr. Baker's Share $\frac{\$\ 78 \times 100}{164} = 47.5\%$

Mr. Thompson's Share $\frac{\$\ 86 \times 100}{164} = 52.5\%$

In reference to the hay land, both parties agreed to the same 50% income split. The pasture acres however, proved to be a problem, as Mr. Baker cannot operate a true business venture by simply receiving a monthly cash rental. Their accountant suggested the following:

Instead of receiving rent on a per cow/calf unit, a share of the calves upon weaning would be distributed according to the concept of their joint venture agreement. Mr. Thompson agreed to this arrangement and based the percentage each would receive on the following assumptions.

1. Grazing Capacity = $\frac{\text{190 acres of pasture}}{\text{4 acres AUM}} = 45$ cows
2. Cash Rent rate = 45 cows x $12 mo x 5 mo = $ 2,700
3. Equivalent Calf Crop Share = 45 calves x 500 lb x 85¢ x 95% (5% death loss)
   = $18,168 x (x%) = $ 2,700
   (x) = 15%

Mr. Baker will, therefore, receive 15 per cent of Mr. Thompson's calves at weaning to compensate for the pasture provided. In addition, the cost of mineral, salt and vet bills would be split in a similar fashion to cement the business nature of their agreement. These costs do not usually pose much of a problem as they are relatively low during the summer months.

As to the division of labor and management, both will share equally in the decision making process with Mr. Thompson understandably providing the majority of farm labor.

Have The Objectives Been Met?

Mr. & Mrs. Baker's objectives:

Retirement security

Their retirement security is provided for by receiving a reasonable share of farm profits and by the retention of their land. Under the joint venture agreement the financial risk lies naturally between a cash rent (no risk) and a custom-hired basis (all risk).

The advantage of a joint venture over a custom-hired option lies in the better performance he can expect. A participant under a joint venture will receive a profit only if the operation is farmed correctly and conscientiously. A custom operator, on the other hand, bills for each task that is completed. If for example, a combine is not set properly, the revenue loss is usually borne by the owner whose only recourse in most situations is to simply not hire the individual for the next crop year.

Transfer of property

The option of transferring the farm to their son George under a tax deferred basis is maintained. The arguments presented on page 9 pertain to the joint venture agreements struck between Mr. Baker and Mr. Thompson. Both parties had a reasonable expectation of profit, incur managerial responsibilities, and are at risk.

Active participation

Many retired farmers still wish to retain a degree of activity in the farm and can provide very valuable information and possible labor to a prospective renter. From the younger participant's view why agree to a 1:3:2 3 crop-share agreement and then solicit information and pay wages to the original owner for labor?

Mr. Thompson's objectives:

Shared revenue and expenses

In today's volatile markets, many beginning farmers cannot afford the risk of a cash rent or even the standard 1/3:2/3 crop-share agreement. In a 1982 survey, only 20 per cent of landlords paid a percentage of expenses under a 1/3:2/3 crop share. Under Mr. Baker's and Mr. Thompson's particular joint venture agreement, returns are distributed after all input costs have been paid. In other words, no one party will benefit or lose more than the other if revenue or costs vary.

Legal and tax implications

Mr. Thompson retains his status as a sole proprietor and can, therefore, elect to use all the income tax strategies available. These include the claiming of capital cost allowance (CCA), the use of livestock inventory provision (LIP), application of the business investment tax credit (ITC), and the use of a five year block and the new forward averaging provision. In regards to legal ramifications, since there is no need to transfer ownership of property into the joint venture there is no necessity of filing proper income tax elections to eliminate any deemed dispositions and corresponding tax liability. Furthermore, the cumbersome provisions of the Income Tax Act dealing with partnerships or with corporations can be avoided, especially in the formation and dissolution of both these types of arrangements.

BACKGROUND INFORMATION REQUIRED

Before establishing a joint venture some prior organization and assembly of facts must be completed. The following checklist contains the items that most businessmen look for:

1. You should have a summary of your personal and financial goals as well as those of the other family members. As illustrated in the case study, each member should list his objectives and see if the format of the proposed joint venture meets the needs.
2. A summary of the fair market value of all your farming assets on hand at the present time is essential. In addition, a complete breakdown of all your liabilities must be provided.
3. The decision of how management decisions and financial control is to be arranged is perhaps the most difficult task. Items such as monthly cash flow requirements to meet living costs, capital investment, and the future distribution of assets are all key factors in arriving at that all-important decision.
4. Deciding on an accounting system to handle the income generated and the final disbursement of income or debt responsibility can prove to be very frustrating. A mock example of one year's records, showing a profit or loss should be handled prior to the start up of a joint venture business. This exercise allows each party to see the money flow handled through this prospective business venture.
5. It is necessary for all parties to understand not only their arrangement but also their agreement. Some individuals do not fully understand what their final legal agreement states. Ask your lawyer to spell out the agreement clause by clause and have your "What if....?" question sheet there before signing the agreement.

If you understand the reasons behind a joint venture agreement and if you are prepared to structure your business activities in accordance with the terms of a joint venture agreement, such an arrangement can provide a valuable method of carrying out your farming activities.

CONCLUSION

Although the material contained in this publication is by no means exhaustive, it does illustrate the basic features and discusses the consequences of forming a joint venture. The reader, we hope, will receive a level of understanding that will enable him or her to ask the right questions of the accountant and lawyer and review their advice. By analyzing the structure and relating this to economic and personal goals, a decision as to whether to form a joint venture or not can be made. Remember, no one type of organization is best for all the farms in Alberta; each case must be considered separately.

Our main concern is that individuals forming a joint venture for the purpose of protecting their eligibility for the farm property provision might not follow the intent of their joint venture agreement. It is extremely important that the parties follow the true intention of the agreement by their conduct and their actions in addition to having it documented in a legal agreement.

Regretfully, the old parable about a wolf in sheep's clothing still applies; be wary of joint venture agreements that could prove to be crop-sharing agreements.

REFERENCES

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A SAMPLE JOINT VENTURE AGREEMENT

Considerations for a Joint Venture Agreement	Sample Clauses
1. Initial Matters (a) the date; (b) the parties	THIS AGREEMENT dated the _____day of _____, 19_____. BETWEEN: JOHN SMITH, Farmer, of _____, in the Province of Alberta. OF THE FIRST PART AND: JACK JONES, Farmer, of _____, in the Province of Alberta. OF THE SECOND PART
(c) a general statement as to the reason for the Agreement	WHEREAS John Smith and Jack Jones have agreed to form a joint venture for the purpose of carrying on a common farm operation; WITNESS THAT in consideration of the execution of this agreement and of the mutual covenants and agreements herein contained (which the parties acknowledge as being valuable consideration) the parties covenant and agree with each other as follows: ARTICLE 1 DEFINITIONS
2. Definitions are usually set out to identify terms which are used throughout the Agreement. Identifying these terms at the beginning does away with the necessity of defining them in the body of the Agreement, which may cause undue confusion.	1.1 Wherever used in this agreement, the following terms have the meanings set opposite to them except where the context otherwise requires: 1.1.1 "Smith" means John Smith, a farmer residing in or near _____, Alberta; the party of the First Part in this Agreement. 1.1.2 "Jones" means Jack Jones, a farmer residing in or near _____, Alberta; the party of the Second Part in this Agreement. 1.1.3 "Joint Venturers" means Smith and Jones. 1.1.4 "Joint Venture" means the joint venture created by this Agreement.
3. The use of a separate bank account provides an accounting record of the Joint Venture. By ensuring that each party is a signatory to larger cheques provides evidence that each party is actively involved in the management of the Joint Venture.	1.1.5 "Operating Account" means a bank account maintained at the _____Branch of the (Bank) in (Town), Alberta into which all farm income and out of which all expenses of the Joint Venture shall be paid, including any contributions from or distributions to the Joint Venture. Either party shall be entitled to make withdrawals from the said account from time to time. Provided that any withdrawal made or to be made which is in excess of $_____ must have the consent of both parties. All withdrawals from the said account shall be made in proportion to the interest of each party in the Joint Venture as determined by Article 5.2 1.1.6 "the said lands" means those lands, buildings and improvements as set out in Schedule "A" to this Agreement.

Considerations for a Joint Venture Agreement

4. Specify the purpose of the joint venture. Set out in general terms the assets to be used to accomplish this purpose.

5. Limit the purpose of the Joint Venture. This will further reinforce the notion that it is **not** a partnership.

6. Allow the parties to carry on present or future business operations whether farming or not, which are outside of this particular farming operation.

7. Maintain a separation between the parties. Once again, this reinforces the non-partnership relationship.

8. Establish the sharing of management and control of the operation and delegate certain tasks to an accountant to ensure that someone takes care of the financial affairs of the Joint Venture.

9. **The Canadian Wheat Board application makes provision for Joint Producers. Please contact your elevator agent for assistance in filling out the permit application correctly.**

Sample Clauses

ARTICLE 2
PURPOSE

2.1 The Joint Venturers hereby enter into and form a Joint Venture for the limited purpose of operating and managing a farming business on the said lands utilizing the machinery, equipment and livestock as set out in Schedule "B" to this Agreement and any other machinery, equipment, livestock or personnel which the Joint Venturers deem necessary for the benefit of the Joint Venture.

2.2 Subject to the provisions of this Agreement, the Joint Venture shall be limited strictly to the purpose set forth in Article 2.1 for the production of farm revenue and shall not be extended by implication or otherwise. In the event that future agreements between the parties are entered into following the completion of this project, such further project shall be performed as a new joint venture of the parties.

2.3 Nothing in this agreement shall restrict the freedom of any Joint Venturer to conduct any other business or activity whatsoever (including the acquisition, development, leasing, sale, operation or management of a farm business). No party shall be accountable to the other Joint Venturer for any activities not included in this Agreement, even if such farming business or activity competes with the farming business of the Joint Venture.

2.4 Except as otherwise provided in this Agreement, no Joint Venturer shall have any authority to act for, or assume any obligations or responsibilities on behalf of the other Joint Venturer or the Joint Venture.

2.5 The Joint Venturers acknowledge that the obligation of each of the participants is several and not joint or collective. No Joint Venturer shall be responsible for any error in judgment or any wrongful or negligent actions of the other Joint Venturer through the association created by this Joint Venture Agreement.

ARTICLE 3
MANAGEMENT

3.1 The overall management and control of the business and affairs of the Joint Venture shall be vested in the Joint Venturers collectively. Except where herein expressly provided to the contrary, all decisions with respect to the management and control of the Joint Venture approved by the Joint Venturers shall be binding on the Joint Venture and the Joint Venturers.

3.2 The accountant, as appointed by the Joint Venturers, shall prepare annual reports of the state of business and affairs of the Joint Venture, including a balance sheet, a statement of the operating account of the Joint Venture, a statement of income and expenses and any other factors of significance to the Joint Venturers.

3.3 The Joint Venturers agree that commencing with the next full crop year the Canadian Wheat Board Permit Book shall designate the Joint Venturers as the Joint Producers.

Considerations for a Joint Venture Agreement

10. As Insurance is an important factor in every farming operation, make reference to it. Consider setting out to whom the losses would be payable.

11. Establish the contributions of each party including land, capital, labor and other contributions. A value must be placed on the contributions to determine what that party will receive or be responsible for during the term of the joint venture and on its termination.

    The following could be included to accomplish this object:

    (a) a definition section;

    (b) a reinforcing of the Joint Venture relationship by stating that each party retains and will obtain his "share" of the operation;

    (c) how each party's "share" is established;

Sample Clauses

ARTICLE 4
INSURANCE

4.1 The Joint Venture shall, to the extent agreed upon by the parties to be necessary, carry and maintain in force the following insurance, the premium for which shall be a cost and expense in connection with the operation of the Joint Venture, namely, hail, fire, extended coverage and vandalism and malicious mischief insurance on the project.

ARTICLE 5
ACCOUNTING, CONTRIBUTION
DISTRIBUTIONS AND ALLOCATIONS

5.1 Wherever used in this Article, the following terms have the meanings set opposite to them:

(a) "Revenue" means all receipts relating to or generated from the farm operation (to be determined on a cash rather than on an accrual basis) including, but without limiting the generality of the foregoing, receipts from:
  (i) sales of livestock, livestock products, crops, feeds, seeds or supplies;
  (ii) government payments;
  (iii) insurance claims relating to the farm operations;
  (iv) dividends and bonuses.

(b) "Operating Expenses" means all expenses relating to or generated by the farm operation including but without limiting the generality of the foregoing, payments of:
  (i) hail and property insurance premiums;
  (ii) sums for purchase of livestock;
  (iii) sums for the maintenance and repair of buildings, fences, machinery, equipment, chattels and fixtures;
  (iv) wages and board to hired personnel;
  (v) Secured obligations and interest on credit obtained for operating loans;
  (vi) a reasonable amount to be retained for working capital as set forth in the Budget and approved by the Joint Venturers.

(c) "Net Cash Flow" means gross Revenue less Operating Expenses.

5.2 The Joint Venturers agree that they shall share in the revenue or operating expenses of the Joint Venture and in all distributions of assets of the Joint Venture, whether distributions of Net Cash Flow or otherwise in the following proportions (hereinafter referred to as "the Participating Interests"):

Smith	50%
Jones	50%

5.3 The Joint Venturers agree that as of the date first above written, each shall have contributed the use of land, buildings, machinery, equipment, and also livestock, feed, seed, supplies and other farm implements and property to the Joint Venture. Such contributions shall be set out in Schedules "A" and "B" to this Agreement and shall be kept current.

5.4 The Joint Venturers covenant and agree that they will provide capital in the form of interest free loans to the Joint Venture as follows:

Smith	$_____
Jones	$_____

(d) repayment of monetary loans; from the initial contribution of inventory, imports or cash contributions;

5.5 It is agreed that all loans provided by the Joint Venturers shall be repaid by the Joint Venture as of the date that such funds become available in excess of funds required to continue the subsequent farming operations as determined by the Joint Venturers. Such loans may be repaid in accordance with each party's Participating Interest.

5.6 There shall be no distribution of Revenue in accordance with Article 5.2 from the Joint Venture until such time as all loans provided by the Joint Venturers have been repaid in full or unless there is unanimous consent of the Joint Venturers.

5.7 The Joint Venturers covenant and agree that they will contribute in the same proportions as set out in Article 5.2 unless otherwise agreed upon between the Joint Venturers:

(a) any guarantees or other security requirements for funds to be employed in performing the Joint Venture; and
(b) working capital of the Joint Venture.

(e) establishment of a separate accounting statement;

5.8 Each Joint Venturer shall have a capital account to which his share of the Net Cash Flow of the Joint Venture shall from time to time be credited or charged.

(f) a provision that each party only receives his "share" whether in the form of an increased interest or a wage for services;

5.9 Except as may be expressly provided for herein or as approved by the Joint Venturers, no payment will be made by the Joint Venture to any Joint Venturer for the service of such Joint Venturer.

(g) provision for distributing the profits and losses for the year to each of the parties;

5.10 Subject to Article 5.6, the Net Cash Flow of the Joint Venture shall be distributed to the parties at such times and in such amounts as the Joint Venturers may deem proper.

(h) setting out who shall do the accounting.

5.11 It is agreed that _____ shall be the accountant for the Joint Venture until otherwise agreed upon by the parties.

ARTICLE 6
RIGHT OF SALE AND
FIRST REFUSAL

11. A right of first refusal would allow one party to continue the operation alone should the other party wish to cease farming operations utilizing assets owned in common.

6.1 For the purpose of this Agreement, "Fair Market Value" shall mean the value as agreed upon by the parties or the value agreed upon between a party to this Agreement and a third party.

6.2 The Selling Party shall give the Remaining Joint Venturer the first opportunity to purchase the Selling Party's interest in the Joint Venture at the fair market value of the said interest.

6.3 The remaining Joint Venturer shall notify the Selling Party within twenty-eight (28) days in writing of his intention to acquire the assets of the Selling Party or shall be deemed to have agreed to the termination of this Agreement and to the liquidation of the Joint Venture.

12. The remaining party must be aware of the risk of possible insolvency of the other party which may well affect him in future joint venture decisions.

13. Article 8 deals with matters which may help the parties in the event of a serious disagreement as to obligations, the following may be included:

(a) the manner of giving written notice and the location to which such notices should be sent;

(b) the laws by which the Agreement will be interpreted;

(c) a clause to prevent one party from arguing that the agreement has been altered orally;

(d) a clause which allows a party to waive his rights under the Agreement without being deemed to have accepted future defaults;

ARTICLE 7
PROHIBITION AGAINST
ENCUMBRANCES

7.1 The Joint Venturers agree that in order not to impair the operation of the project, including any financing that may be required from time to time, that they shall not be at liberty to pledge, mortgage, charge or otherwise encumber their undivided interest in the project in any way whatsoever without the consent in writing of the other Joint Venturer, which shall not be unreasonably withheld.

ARTICLE 8
GENERAL

8.1 All notices, demands or requests provided for or permitted to be given pursuant to this agreement must be in writing. All notices, demands and requests to be sent to any party shall be deemed to have been properly given or served by personal delivery or by depositing the same in the mail, addressed to the party intended, postpaid and registered at the following addresses:

(a) John Smith
(address)
(b) Jack Jones
(address)

By giving to the other parties at least twenty-eight (28) days written notice thereof, the parties and their respective successors and assigns shall have the right from time to time and at any time during the term of this Agreement to change their respective addresses and each shall have the right to specify as its address any other address.

8.2 This Agreement and the obligations of the Joint Venturers hereunder shall be interpreted, construed and enforced in accordance with the laws of the Province of Alberta.

8.3 This Agreement contains the entire agreement between the parties relative to the formation of a Joint Venture to develop the project. No variations, modifications or changes herein or hereof shall be binding upon any party hereto unless set forth in a document duly executed by or on behalf of such party.

8.4 No consent or waiver, express or implied, by any Joint Venturer to or of any breach or default by the other in the performance by the other of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such Joint Venturer hereunder. Failure on the part of either Joint Venturer to complain of any act or failure to act of the other Joint Venturer or to any of the other Joint Venturer in default, irrespective of how long such failure continues, shall not constitute a waiver by such Joint Venturer of his rights hereunder.

8.5 If any provisions of this Agreement or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

Considerations for a Joint Venture Agreement

(e) a clause expressly denying the notion of partnership should be included;

(f) a clause stating that each party is liable for his own debts and obligations; and

(g) a clause which makes the Agreement binding on all persons standing in the place of a party (e.g. if one party dies, his personal representative or executor must comply with all the terms of the Agreement during its wind-up, as if he were a party).

14. Define when the Agreement shall come to an end.

15. The parties must then sign the Agreement in the presence of a witness.

Sample Clauses

8.6 The parties expressly acknowledge and agree that it is not the intention of this Agreement to constitute a partnership and no partnership shall be deemed to be constituted by any of the provisions hereof.

8.7 The parties expressly acknowledge and agree that neither party shall be liable for the debts or obligations, howsoever arising, of the other, without the written consent of that party.

8.8 Subject to the restrictions on transfers and encumbrances set forth herein, this Agreement shall enure to the benefit of and be binding upon the undersigned Joint Venturers and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. Whenever in this instrument a reference to any Joint Venturer is made, such reference shall be deemed to include a reference to the heirs, executors, administrators, legal representatives, successors and assigns of such Joint Venturer.

ARTICLE 9
TERMINATION OF THE
JOINT VENTURE

9.1 The Joint Venture was commenced on _____, 19____ and shall continue until the earliest of:

(a) one of the Joint Venturers disposing of his total interest in the Joint Venture by any manner whatsoever;
(b) the parties mutually agree to terminate the Joint Venture or one party providing four (4) months notice to the other party of his intention to terminate this Agreement;
(c) the death of one of the parties, or;
(d) December 31, 1989

9.2 In the event of the termination of the Joint Venture pursuant to Article 9.1:

(a) all livestock and grain inventory shall be distributed according to each party's Participating Interest at the time of termination;
(b) all crops which have not been harvested shall be distributed according to each party's Participating Interest upon completion of the harvest.

IN WITNESS WHEREOF we have hereunto set our hands and seals this_____ day of _____, 19____.

SIGNED, SEALED and DELIVERED
in the presence of:

_____ _____
Witness John Smith

SIGNED, SEALED and DELIVERED
in the presence of:

_____ _____
Witness Jack Jones